

REDEVELOPMENT AGENCY AGENDA REPORT

SUBJECT: Lease Agreement with Dole Fresh

AGENDA DATE: October 7, 2008

PREPARED BY: Rosalind Guerrero, RDA Director

APPROVED FOR AGENDA BY: Ralph Velez, City Manager/Ex. Director

RECOMMENDATION: Approve a 6 month lease term with Dole Fresh

FISCAL IMPACT: \$1,738.00 monthly

BACKGROUND INFORMATION:

The Redevelopment Agency owns the parcel located at 221 Second Street and known as the former United Farm Workers Building (UFW). The Agency over time has leased the property for private uses and is currently vacant. The property is included in the Exclusive Negotiating Agreement with the Charles Group for sale or transfer of land. Staff has notified the Charles Group of Dole Fresh wanting to lease the property for 6 months, as was approved last year for the parking of the farm labor buses and employee parking of their personal cars while at work.

CURRENT DISCUSSION:

Dole Fresh has submitted a letter of interest to lease the former UFW parking lot for a six (6) month period beginning November 1, 2007 to April 1, 2008. The lease will allow Dole Fresh to use the paved lot as parking for buses and as a pick up and drop off point for seasonal workers employed by Dole Fresh. Dole Fresh will provide 24-hour security, portable restroom facilities, and fencing of the area. The size of the parking area allows off street parking of employee vehicles during the day.

RECOMMENDATION

Approve the lease with Dole Fresh commencing November 1, 2008 to April 12, 2009.

Attachments: Lease agreement

Agenda Item No. ____

Page ____ Of ____

Article I. COMMERCIAL LEASE AGREEMENT

This Lease, dated as of this 1st day of November, 2008 ("Effective Date") is made by and between **Community Redevelopment Agency of the City of Calexico** or assignee (herein called "Landlord") and **Dole Fresh Vegetables Inc.** (herein called "Tenant") for certain real property as described herein and owned by Landlord.

In consideration of the rents, covenants and agreements to be observed and performed, Landlord Leases to Tenant, and Tenant leases from Landlord that certain Leased Property identified below.

1. Leased Property: Tenant shall Lease from Landlord that certain real property comprising approximately three (3) acres of land located at 221 West Second Street, Calexico, CA ("Property"). (The exact legal description of the Property is described on Exhibit "A" attached hereto.)

2. Use: The Property shall be used for the lawful purpose of farm labor bus pick-up and drop-off and bus storage. Tenant will not conduct any business activity nor offer any service without obtaining, and maintaining, in current status at all times, all licensing and/or certification as may be required by applicable Federal, State, and local authorities. Tenant will satisfy all land use requirements of the City of Calexico. The Property shall not be used for any other purpose without the written consent of Landlord. Tenant agrees that under no circumstances shall the property be used for:

- A. an auto dismantling business
- B. wrecking yard
- C. junkyard
- D. tire storage

Tenant shall not use, store, treat, discard or dispose of any hazardous substances in or about the Property. For purposes of this Lease, "hazardous substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the Environmental Protection Agency (EPA) and the list of toxic pollutants designated by Congress or the EPA under any applicable environmental law or legislation. To the extent that any of the applicable environmental laws of the State of California establish a meaning for "hazardous substances" which is broader than that specified in any federal legislation or laws, such broader meaning shall apply. "Applicable environmental law" shall mean and include the collective aggregate of the following: any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions) or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Property pertaining to health of the environment.

Without limiting the foregoing, if the presence of any hazardous substances on the Property caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at its sole expense as is necessary to return the Property to the condition existing prior to the introduction of any such hazardous substances to the Property; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, so long as such action would not have any potential material adverse effect on the Property.

Tenant hereby indemnifies and agrees to defend and hold Landlord harmless from and against any and all claims, demands, causes of action, loss, damage, liability, cost and expenses (including reasonable attorneys fees and court costs) and including, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision, fines, penalties, damages to third parties, lost profits from loss of use and any hazardous waste liability under applicable environmental law by reason of or arising out of the violation of any applicable environmental law by Tenant or the presence of hazardous substances present in the soil or ground water on or under or about the Property due to any act or failure to act on the part of Tenant while the Lease is in effect (including any renewals, extensions or holdover periods). This obligation to indemnify, hold harmless and defend shall survive termination of the Lease.

3. **Term:** The term of this Lease shall be six (6) Months commencing November 1, 2008 and expiring April 1, 2009 ("Term"). There shall be no automatic extension of this Lease. Should Tenant wish to extend the Lease, Tenant must request an extension from Landlord in writing at least Thirty (30) Days before the expiration of the Lease. The request must be presented in writing to Calxico Community Redevelopment Agency Board (the "Agency") and approved by the Agency before any extension becomes effective and binding.
4. **Rent:** Tenant agrees to pay to Landlord One Thousand seven hundred thirty eight Dollars and 00 cents (\$1,738.00) per month. This rent payment shall be due on the first of each month. The rental amount shall remain flat for the Term of the Lease but may be increased in the sole discretion of the Landlord in the event an extension of this Lease is granted to Tenant upon the expiration date of the Term. Acceptance of a partial rental payment by Landlord shall not constitute a waiver of the Landlord's right to demand full payment of all rent as required by this Agreement.
5. **Deposit:** First and Last months' rent for the Property shall be deposited with Landlord by Tenant upon the Effective Date of this Lease and before Tenant is allowed occupancy.
6. **Right to enter Property for purpose of inspection:** Landlord retains the right to enter upon the Property with reasonable notice to Tenant at reasonable times for the purpose of inspecting the Property and any improvements on it as to its maintenance and repair and compliance with this Lease.
7. **Tenant Leases property "As Is":** Tenant has inspected the property and agrees to Lease the Property in its current "As is" "Where As" condition with all faults, both latent and patent. However, Tenant shall not be liable for any claims, demands, causes of action, loss, damage, liability, cost and expenses (including reasonable attorneys fees and court costs) and including, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision, fines, penalties, damages to third parties, lost profits from loss of use and any hazardous waste liability under applicable environmental law arising out of or relating to a latent or patent defect in the Property existing prior to Tenant's occupancy of the Property or resulting from the act or failure to act of the Landlord, its agents or employees.
8. **Compliance with all City, State and Federal Laws:** Tenant hereby agrees to comply with all City, County, State, and Federal ordinances and statutes that are applicable to the Property Lease and the uses described herein.
9. **Licenses and Certification:**
10. **Assignment and Subletting:** Tenant shall not sublet the Property or any part thereof, nor assign this Lease, or any rights therein, without first obtaining the written consent of the Landlord which shall not be unreasonably withheld, conditioned or delayed. Any sublease or assignment of this Lease without first obtaining the written consent of Landlord shall make this Lease voidable in the sole and absolute discretion of Landlord.
11. **Liability of Landlord:** Tenant agrees to defend, indemnify and hold harmless the Landlord, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, attorneys' fees and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of or in connection with Tenant's occupancy, and/or use of the Property, except that Tenant shall not be liable for any claims, demands, actions, losses, damages, injuries, attorneys' fees and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of any act or failure to act by Landlord, its agents or employees.
12. **Fire and Casualty Insurance:** Tenant agrees, at its sole cost and expense, to carry fire and casualty insurance on any, and all, buildings and improvement within the Property, in an amount equal to the replacement value of the improvements.

13. Public Liability Insurance: Tenant shall provide public liability insurance for personal injury and/or property damage arising out of or in connection with Tenant's occupancy of the Property in an amount of not less than one million dollars (\$1,000,000) per occurrence. Said insurance shall be primary insurance and Tenant shall provide the Landlord with a Certificate of Insurance naming the Landlord as an "additional insured" before taking occupancy of the Property.

14. SUBROGATION. As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

15. Maintenance: Tenant agrees. At its sole cost and expense, to keep the Property including all improvements thereon clean, neat and painted and otherwise reasonably maintained. Tenant shall provide twenty-four (24) hour security, portable restroom facilities and temporary fencing of the area.

16. Repairs: All repairs to the Property and its improvements including all maintenance, servicing, and replacement parts, shall be at Tenant's expense. Notwithstanding the foregoing or Paragraph 1, above, Tenant shall have no responsibility for maintenance or repair of buildings or power poles on the Property.

17. Utilities: Tenant agrees to pay for all utilities and services furnished to the Property.

18. Default: If Tenant, after written notice from Landlord, fails to remedy any monetary default or any other term, covenant or condition of this Lease within 15 days of said receipt, then the Landlord or its agents may enter upon the Property, take possession thereof, and remove all persons therefrom and at Landlord's option, either terminate this Lease and all the Tenant's rights herein, or rent the Property for the account of the Tenant, or follow any other remedy provided by law. Any holding over beyond the term prescribed herein shall be construed as a month-to-month tenancy at a rental payable to Landlord equal to 150% of the Rent.

19. Alterations: Tenant must receive prior written permission from Landlord before any alterations or additional improvements are made to the Property. A violation of this Section 19 shall be a material default of the Lease.

20. Attorney's Fees: Should either party to this Lease be compelled to institute any legal action to enforce any of the terms, covenants or conditions hereof, the prevailing party shall hereby agree to pay such attorneys fees and costs as the court may deem reasonable.

21. Possessory interest: Tenant recognizes and understands that this Lease shall create a possessory interest subject to property taxation and that the Tenant shall be responsible for the payment of property taxes levied on such interest.

22. Binding upon heirs: The covenants and agreements contained in this Lease shall inure to the benefit of and be binding on the parties hereto, their heirs, legal representatives, successors or assigns.

23. Notice: Notices between the parties hereto may be served by mailing in the United States Mail to the following addresses:

Landlord: Community Redevelopment Agency
of the City of Calexico
608 Heber Avenue
Calexico, CA 92231

Tenant: Dole Fresh Vegetables, Inc.
P.O. Box 2018
Monterey, CA 93942

24. Modification: This Agreement constitutes the full and complete agreement between the parties. Any modification must be in writing and shall be signed by both parties and authorized by the Community Redevelopment Agency of the City of Calexico.

25. Severance: If any provision of this Lease is determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

26. Conditional Lease Agreement: The Parties acknowledge that title to the Property is currently in the process of being transferred to M&A Gabae LP ("Transferee"). As a material condition of this Lease, Transferee shall acknowledge and approve this Lease within five (5) days of the Effective Date in which event this Lease shall be assigned to Transferee per the terms and conditions of the Land Transfer Agreement. Tenant shall not be liable for any Rent hereunder unless and until the Transferee acknowledges and approves this Lease.

27. LIENS. Tenant shall keep the Property and the property in which the Property are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Landlord may require, at Landlord's sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) time the estimated cost of any improvements, additions, or alterations in the Property which the Tenant desired to make, to insure Landlord against any liability for mechanic's and material men's liens and to insure completion of the work.

IN WITNESS WHEREFORE, the parties hereto have executed this agreement on the day and year above written. This Lease agreement was authorized by the Community Redevelopment Agency of the City of Calexico at its meeting of October 7, 2008.

Landlord: **CITY OF CALEXICO**

By: _____
City Manager/Executive Director

Tenant: **DOLE FRESH VEGETABLES, INC.,**

By: _____

By: _____

Attention! (The California Government Code requires that all Leases of Agency property be recorded at the Office of the County Recorder. Therefore, the signatures on this page must be notarized.)